

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

GENERAL ADJUSTMENT OF ELECTRIC)	
RATES OF KENTUCKY UTILITIES)	CASE NO. 5915
COMPANY)	

INTERIM ORDER

On July 10, 1981, the Public Service Commission ("PSC") issued an interim Order in the above-captioned docket directing Kentucky Utilities Company ("K.U.") to submit a plan for re-funding the amount it unlawfully charged its customers from the period May 15, 1974 to June 23, 1975. Our Order of July 10, 1981, recited that final court affirmance of the PSC's 1974 Order occurred on June 19, 1981, and that under the statutory directive of K.R.S. 278.190(4), the PSC must now issue its final Order setting forth the terms and conditions under which the refund from July 11, 1974, until June 19, 1981, shall be made to K.U.'s customers. 1/

On July 22, 1981, counsel for K.U. verbally informed the Commission that the Company would refuse to comply with our interim Order of July 10, 1981, and would, instead, make the

1/ The terms and conditions by which K.U. shall make the refund for the period from May 15, 1974 (when the Company first put the unlawful rates into effect) until July 10, 1974 (the date of the PSC's original rate Order) were set forth in the July 10, 1974 Order and are not subject to further modification by this Commission.

refund to its customers under whatever terms and conditions the Company saw fit to do. On July 24, 1981, K.U. filed suit in the Franklin Circuit Court against the Commission alleging that our July 10, 1981 Order requiring the submission of a refund plan was unlawful. Our July 10, 1981 Order was, of course, interlocutory only, and we have, accordingly, directed our legal staff to seek dismissal of the July 24, 1981 complaint on this ground.

Based upon all of the above-recited facts and being advised, the Commission hereby finds as follows:

(1) Kentucky Utilities Company has willfully chosen to disregard a valid Order of this Commission issued pursuant to K.R.S. 278.190(4), and as such, may be subjected to the penalty provisions contained in K.R.S. 278.990.

(2) Kentucky Utilities Company has indicated that it will begin making refunds to certain of its customers immediately and without prior approval of this Commission as required by K.R.S. 278.190(4). While the Commission cannot countenance such blatant disregard of the legislature's mandate, we will nevertheless not seek to stop the Company from refunding certain monies to its customers by injunctive action in the courts. Our reasoning here is that K.U.'s customers have been deprived of \$6.7 million (plus interest) for over seven years now by K.U.'s appeal of this matter to five courts of this Commonwealth. We, therefore, believe it is in the best interests of K.U.'s customers to allow the Company to go ahead

and give back a portion of its ultimate refund liability at this time. This will help to lessen the impact on K.U.'s customers of the ever-increasing rates the Company continues to seek before this agency. 2/ Nevertheless, the Public Service Commission hereby serves notice on Kentucky Utilities Company that (a) any costs incurred in making this refund without our approval may or may not be allowed as a legitimate operating expense in the Company's next rate case; and (b) that any legal fees the Company incurs in further appealing this matter past the Court of Appeals final mandate issued June 19, 1981, may or may not be allowed as a legitimate operating expense in the Company's next rate case. 3/

(3) As discussed in our interim Order of July 10, 1981, the interest rate to be applied to the principal amount of \$6.7 million for the time period July 11, 1974 to June 19, 1981, has yet to be determined by a final Order of this Commission as provided pursuant to K.R.S. 278.190(4). While this statutory provision gives the Public Service Commission sole discretion to set a fair, just and reasonable interest rate to be applied to refunds of this type, the Commission believes that

2/ K.U.'s next rate increase to its customers will come in mid-September, 1981.

3/ If the Public Service Commission finds that any cost of doing business by a utility subject to its rate jurisdiction was not "prudently incurred," it may find that this is not a legitimate operating expense for the utility. Such cost would, accordingly, have to be borne by the utility's stockholders rather than the rate-paying customers.

this question is a matter of such public importance that all customers of Kentucky Utilities (as well as all other interested parties) should have the opportunity to express their views on what a proper interest rate from July 11, 1974, to June 19, 1981, should be. Accordingly, the Commission will initiate a public hearing on this question to be held at the Public Service Commission on August 14, 1981, at 10:00 A.M. in Frankfort, Kentucky. The record adduced from this hearing will then be used by the Commission to determine a fair, just and reasonable interest rate to be applied to that portion of the principal K.U. withheld from its customers from July 11, 1974, to June 19, 1981.

Based upon the above-stated findings, the Commission hereby ORDERS as follows:

(1) A public hearing will be held at the Public Service Commission's Offices in Frankfort, Kentucky on August 14, 1981, at 10:00 A.M. (EDT), for the purpose of receiving formal testimony and either written or oral statements on the issue of what is a fair, just and reasonable interest rate for Kentucky Utilities Company to pay its customers on that portion of a \$6.7 million refund that it is obligated by law to pay for the period July 11, 1974 to June 19, 1981.

(2) Any customer of K.U., or any organization representing customers of K.U., may appear in person to present their views on this matter at the time of the hearing, or may submit written comments to the Commission no later than August 21, 1981. All such written comments (and any further inquiry regarding the procedures to be followed) should be addressed to:

Mr. Richard D. Heman, Jr.
Secretary
Public Service Commission
Post Office Box 615
Frankfort, Kentucky 40602
(Telephone 502/564-7072)

Done at Frankfort, Kentucky this 29th day of July, 1981.

PUBLIC SERVICE COMMISSION

Marlin M. Voh
Chairman

Did not participate
Vice Chairman

Don Harnigan
Commissioner

ATTEST:

Secretary